

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 88188-001

v

Physicians Health Plan of South-Michigan
Respondent

Issued and entered
This 21st day of April 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On February 28, 2008, XXXXX, mother of Petitioner XXXXX, filed a request for external review with the Commissioner of the Office of Financial and Insurance Regulation under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.* On March 3, 2008, after a preliminary review of the material submitted, the Commissioner accepted the request for external review.

The issue in this external review can be decided by a contractual analysis. The contract involved here is the certificate of coverage (Certificate) issued by Physicians Health Plan of South Michigan (PHP). The Commissioner reviews contractual issues under MCL 500.1911(7). This matter does not require a medical opinion from an independent review organization.

II
FACTUAL BACKGROUND

The Petitioner is an 18 year old boy with autism who also has seizures. He takes several prescription drugs which are prescribed in doses appropriate to his age and weight.

These dosages require combining pills of various strengths because the drugs are not available in the exact dosages Petitioner requires. PHP requires a copayment for each prescription or refill of a preferred brand drug.

The Petitioner has been paying individual copayments in the past but appealed, asking PHP to cover different doses of the same medication with a single copayment. Petitioner also requested reimbursement of past copayments. PHP denied the request, saying it applied the copayment in accordance with the rider. Petitioner is no longer a PHP member.

The Petitioner exhausted PHP's internal grievance process and received its final adverse determination letter dated February 15, 2008.

III ISSUE

Did PHP assess copayments properly for the Petitioner's prescription drugs?

IV ANALYSIS

Petitioner's Argument

The Petitioner's mother says that her son has been prescribed Fluoxetine, Topamax and Lamictal. Because he was a child (Petitioner's 18th birthday was March 1, 2008), his dosage was based on weight and often required adjustments. She says that "PHP initially agreed that only one co-pay would be charged per medication even though different strengths were needed to complete a single dose. PHP entered an override in their prescription system to reflect this single co-pay requirement which was only in effect for one year. PHP denied the same coverage in subsequent years."

Petitioner's mother says that it is a financial hardship on the family to have to pay multiple copayments to achieve the prescribed dose.

PHP's Argument

In its February 15, 2008, final adverse determination PHP stated,

Our original decision to deny your request was upheld because our pharmacy vendor, Medco processed individual prescriptions for the medication written by [Petitioner's] physician. The PHP Certificate of Coverage, Outpatient Prescription Drug Rider, Section 1: "What's Covered – Prescription Drug Benefits" "What you Must Pay" states:

"You are responsible for paying the applicable Co-payment described in the Benefit Information table when Prescription Drug Products are obtained from a retail or mail-order Network pharmacy. . ."

"Prescription Drug Products" is defined in Section 3: "Glossary of Defined Terms"

"New Prescription Drug Product" – a prescription Drug Product or new dosage form of a previously approved Prescription Drug Product. . ."

PHP maintains the copayment was appropriate.

Commissioner's Review

The Commissioner notes that the certificate of coverage provides that the subscriber's drug copayment is assessed "per prescription order or refill". (See page 7 of the Certificate.) While it is unfortunate that the Petitioner has to take several pills to achieve the prescribed dose, the Certificate is unambiguous as to the copayment required. The Commissioner finds that the copayments are appropriate for each prescription filled and PHP's final adverse determination is consistent with its Certificate.

V ORDER

The Commissioner upholds PHP's February 15, 2008, final adverse determination. PHP appropriately applied the copayments for each prescription filled even multiple doses of the same medication as they are written on separate prescriptions.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner

of the Office of Financial and Insurance Regulation Health, Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.